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conceivable advantage. The distinction does indeed exist in certain parts of the country but "a true man", it is submitted, "who is without fault", will retreat whenever possible rather than take a human life unnecessarily. The original text quotes Foster and East as authorities but as Professor Beale has pointed out in an article entitled "Retreat from a murderous assault", in 16 *Harvard Law Review* 567, Foster misapprehended the early authorities and East simply copied Foster and his error. The true doctrine both as regards the authority and the reason of the thing is not as stated in the text but is the exact reverse. An examination of the sections dealing with larceny would lead to the conclusion that the book, in both its forms, is practical rather than theoretical.

Now as to the notes to the above section. They are fuller than in the first edition and do bring the treatise up to date as regards the adjudged cases. They are valuable and creditable to the editor's industry but a reference in the footnote to Professor Beale's article would have corrected the text or at least supplied the corrective.

The original work, however, was clear, concise and generally accurate. The present edition is handier than the original book and more valuable owing to the notes and annotations of the editor. A good book to begin with, it is now better.

THE LAW OF CRIMES. By J. W. May. Third edition by Harry A. Bigelow. Boston: Little, Brown & Co. 1905. pp. liv, 366.

The thoroughly excellent little book of the late Judge May appears for a second time in a new and enlarged edition, both as regards the text and notes. If the adage—"Count no man happy till he is dead"—should be applied to Judge May, he would surely be a happy man these days, for he has been singularly fortunate in his successive editors, Professors Beale and Bigelow. The modest little book of 1881 had but a brief introduction, and the crimes were arranged and treated alphabetically. Judge and Editor disagreed, for in the second edition published in 1893 the crimes were taken out of their alphabetical sequence and arranged in a logical and systematic order. The additions to the text and notes were considerable as appears from the table on page xx of "sections added by the [second] editor".

Professor Bigelow has taken advantage of the larger size of the page to lay a generous hand on text and notes, so that the book appears puffed up and swollen with pride, it may be, when compared with the modest volume as Judge May left it. The additions of Professor Bigelow are many as appears from the list given on pages liii-liv, and important as appears from the examination of the added passages. For example, sections 22a, 23a, b, c, dealing with condonation, condonation by public officers, compounding crimes, where the added matter is theoretical as well as new, or sections 47a and b on self defence and burden of proof in intoxication, 67a and 77a, 155a, 277a, which are not only new but practical as well as theoretical.

In the review of Clark and Marshall's *Law of Crimes*,¹ section 281 was specially singled out. If we turn to the present work, it will be found that section 64 (due to Professor Beale) is still further

¹ See *supra*, p. 66.

enlarged by Professor Bigelow as follows: "It is sometimes said that in the first case [of an unprovoked felonious assault] the assailed person need under no circumstances retreat, in order to make the killing justifiable. As a matter of both public policy and legal principle it would seem that the other view is clearly preferable." The learned editor reinforces the statement in the text by the following reference in the footnote: "For a discussion of the rise of this doctrine and a collection of the cases, see an article by Professor J. H. Beale, Jr., in 16 Harvard Law Review, 567."

Many other instances might be chosen of the excellent judgment as well as the law of the editor, and the footnotes, while comparatively few in number, are ample for the student, for whom such a work must be and is primarily intended. It is without hesitation the best short treatise on the subject of Crimes. This pre-eminence is due to the care and accuracy of the editors rather than to the merit of the original work. "If a jest's prosperity lies in the ear of him that hears it," it is no less true that the success of the book lies in its editors.

THE ENGLISH AND INDIAN LAW OF TORTS. By Ratanlal Ranchoddas and Dhirajlal Keshavlal Thakor. Third Edition. Bombay: The Bombay Law Reporter Office. 1905. pp. c, 508.

Although the authors have carefully revised this work and added many new cases, in preparing the third edition, they have diminished instead of increasing its bulk. Portions of the old text, as well as a few citations of authorities, have been omitted, but the space thus saved has not been filled with new matter, although many a new paragraph has been added. The changes appear to be improvements in every case.

Other changes might have been made to the further improvement of the book. For example, the authors repeat the statement, made in former editions, that "a tort is a violation of a right *in rem*, i. e., of a right vested in some determinate person, either personally or as a member of the community and available against the world at large." Undoubtedly most torts are violations of a right *in rem*, as thus defined; but some are not. An innkeeper commits a tort by turning away a respectable traveller who asks for refreshments and tenders its proper price; but he does not violate a right which is available to the traveller against the whole world. Indeed, the whole world, save the class of innkeepers, could have turned this very traveller away from its inhospitable doors, without committing a tort.

Another statement which might well be changed in future editions, is that, "to constitute a tort, a wrongful act must be committed." Certainly the courts have long rejected this notion of Austin, that to refrain from committing a tort, a person has only to refrain from acting. Negative torts form a large and important class in modern litigations. Notwithstanding these defects the book, as we stated in a former review of it in the REVIEW,¹ is a valuable addition to the literature of this fascinating topic.

¹ 4 COLUMBIA LAW REVIEW, 446.